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ABSTRACT

Clarifying guidelines are presented for use by California community college districts in interpreting Title 5 of the California Administrative Code, which requires the adoption of employee affirmative action plans, including goals and timetables to increase the number of ethnic minorities and women in district employment. Following material on the legislative background of Title 5 and on the development of the guidelines in response to district requests, the report presents the entire chapter of Title 5 dealing with affirmative action integrated with explanatory guidelines. Subchapter 1 provides information on the rationale for and intent of affirmative action and defines key terms, such as "affirmative action plan," "business necessity," "protected groups," and "sexual harassment." In addition, this subchapter covers district affirmative action policy and plans, district evaluation and reports to the Chancellor, and minimum standards. Subchapter 2 deals with the responsibilities of the Chancellor with respect to assistance, reporting, and evaluation. Finally, subchapter 3 delineates district responsibilities in areas including affirmative action plan implementation, recruitment, job announcements, applicant pools, screening and selection procedures, handicapped employees, sexual harassment policy, complaint procedures, workforce and utilization analyses, corrective action, goals and timetables, and affirmative action advisory committees. (KL)

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Board of Governors of the
California Community Colleges
December 9-10, 1982

Title: Affirmative Action Guidelines

Staff Presentation: Juana Barbarita
Administrator for Affirmative Action Programs

Summary

1. The Board adopted Title 5 regulations in December, 1981 which revised provisions requiring districts to adopt and implement employment affirmative action plans. Under these regulations, district plans must be submitted for review and approval by the Chancellor's Office, and must be thereafter updated by the district at least every three years.

2. This item details a series of clarifying guidelines that will be used by staff and districts in interpreting various sections of the regulations. The guidelines were prepared with the assistance of an ad hoc advisory committee and have been widely reviewed and commented on by district personnel.

3. These interpretive guidelines are for the assistance of Chancellor's Office staff and are presented to the Board for information only.

VC 820 537

Background

The Board of Governors unanimously adopted Title 5 regulations in June 1977, requiring community college districts to adopt employee affirmative action programs including goals and timetables to increase the number of ethnic minorities and women in district employment.

A question was raised as to the Board of Governors' authority to adopt these regulations, so in 1978 the Legislature followed the Board's lead and enacted Sections 87100-87106 of the Education Code, putting into legislation the requirement that community college districts adopt and imple ent affirmative action programs to increase minorities in district employment. The legislation required the Chancellor's Office to report to the Legislature on July 1, 1980, the progress community college districts had made in implementing their affirmative action programs. The legislation also required the Chancellor's Office to render assistance to districts in developing and implementing affirmative action employment programs.

Finally, the law required the Chancellor to assist community college districts in adopting affirmative action programs by providing guidelines for district use. These guidelines gathered the requirements for affirmative action from various federal and state regulations into one document. As the guidelines were not initially adopted as regulations, they were not mandatory for community college districts and could not be enforced by the Chancellor.

In December, 1981, the Board unanimously adopted into Title 5 a set of regulations incorporating much of what had been contained in the Chancellor's guidelines, including the essential requirements of federal law (Board Action No. 811248). These regulations make the adoption and submission of an affirmative action plan a minimum standard for receipt of state aid (Section 53005) and authorize the Chancellor to "take whatever action he or she deems necessary to effect compliance" (Section 53012).

The present set of additional guidelines includes some materials from the old Chancellor's guidelines that was not incorporated into regulations, and some additional explanatory material.

Development of Guidelines

Not all of the previous guidelines were adopted as regulations but were revised, in some cases, and proposed as part of the present set of new guidelines. District assistance for development of the new set of guidelines was solicited in the Spring of 1982 at district consortia meetings. As a result, a preliminary draft was prepared for distribution to all district personnel directors and affirmative action officers with a public discussion at meeting of the Community College Consortium/Affirmative

Action in July 1982. Following this meeting, a first draft was prepared and distributed to all district superintendents, presidents, directors of personnel, affirmative action officers, Extended Opportunity Programs and Services Directors, Handicapped Enablers, and Women's Program directors on August 12, 1982. Written comments were solicited through September 15, 1982, and actually accepted through October 15, 1982.

A second draft was prepared, taking into consideration all relevant comments received in writing, and distributed on October 28, 1982, to all district superintendents, presidents, personnel directors, and affirmative action officers. This draft was discussed at two regional meetings, at Peralta Community College District on November 4, 1982, and at North Orange County Community College District on November 8, 1982. As a result of input received at these meetings as well as written comments, a third draft was prepared and distributed on November 16, 1982, to all district superintendents, presidents, affirmative officers, and personnel directors. Although the comment period will be open until November 30, 1982, wide support for the third draft is anticipated.

Format

This item is arranged so that the entire Title 5 chapter dealing with affirmative action is presented along with the explanatory guidelines in an integrated fashion. Each section of the regulations for which a guideline has been devised is followed by that guideline, printed in italics. For some sections, no guideline has been considered necessary.

Section 1., Chapter 1 (commencing with Section 53000) of Division 4 of Title 5 of the California Administrative Code is repealed.

Section 2., Chapter 1 of Division 4 of Title 5 of the California Administrative Code is added as follows:

Chapter 1. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Subchapter 1. GENERAL

53000. Rationale and Intent.

(a) Community Colleges have an obligation to promote cultural, racial, and human understanding within the communities they serve as well as within their spheres of influence.

(b) It is educationally sound for all students attending California Community Colleges to have available positive images provided by individuals from historically underrepresented groups, and to observe that such individuals can assume responsible and diverse roles in society.

(c) The richness which cultural and racial diversity brings to our national heritage and the exercise of democratic principles can best be taught in the presence of staffs of mixed races and ethnic groups as well as both sexes working toward mutually established goals.

(d) Efforts toward the adoption of affirmative action and equal employment opportunity policies and programs, leading to successful recruitment, employment and promotion of historically underrepresented groups, should be increased.

(e) The intent of these regulations and the guidelines developed hereunder is not only to correct employment deficiencies but to seek to improve and strengthen the total personnel programs of the California Community Colleges by providing opportunities for equitable consideration of all candidates for employment and promotion.

(f) The Board of Governors of the California Community Colleges reaffirms its commitment to equal employment opportunities. It emphasizes the determination that those practices employed by California Community College districts which result in certain groups of job applicants being excluded and/or underrepresented in the institution's work force be eliminated and that the results of their employment practices through affirmative action will be increased representation and retention of historically underrepresented groups as defined by federal regulations.

(g) Policies which call for efforts to promote action in the recruitment, employment, and promotion of persons, regardless of race, color, religion, national origin, sex, age, handicap, or marital status, should be more than proclamations of nondiscrimination in employment practice but should be affirmative and result-oriented efforts to produce a substantial increase in employment opportunities of underrepresented groups, in all areas and at all levels, including executive, administrative, and managerial.

Note: Authority cited: Sections 71020, 87105 Education Code

Reference cited: Section 87100 Education Code

53001. Definitions. As used in this subchapter:

(a) Affirmative Action Programs. "Affirmative action programs" means all the various methods by which equal employment opportunity for all is made a reality. Equal employment opportunity is a condition, and affirmative action is the means by which the condition is achieved. Further, an affirmative action program with goals and timetables is a set of specific and result-oriented procedures. The objective of such a program is to achieve equal employment opportunity by recognizing and overcoming the effects of past discrimination in employment. Affirmative action programs specifically address the underrepresentation of ethnic minorities, women, handicapped persons and Vietnam-Era veterans in the labor market and in certain employment classifications.

(b) Affirmative Action Plan. The "Affirmative Action Plan" is a written plan in which a district's work force is analyzed and includes a plan of specific result-oriented procedures to insure equal employment opportunity and proportionate representation of qualified representatives of protected class members.

(c) Business Necessity. "Business necessity" means circumstances necessitating an employment practice. Business necessity exists where the employment practice is necessary to avoid substantial extra costs or human risk. Business necessity requires greater cost than does mere business convenience. Business necessity does not exist where there is an alternative that will serve business needs equally well.

Guideline 53001 (c).

Business necessity is a major judicial defense for an employment practice which operates to exclude individuals on the basis of sex or minority status. The test of business necessity is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business, and there must be available no acceptable alternative policies or practices which would better accomplish the business purpose advanced.

When "business necessity" is used as a reason to modify recruitment practices, districts should include in their affirmative action plan the circumstances under which recruitment may be modified.

Whenever "business necessity" is to be invoked, the impact of the proposed action upon the affirmative action plan should be assessed in consultation with the affirmative action officer. Documentation including justification should be prepared and retained for three years.

(d) Equal Employment Opportunity. "Equal employment opportunity" is the goal of affirmative action programs. It means that individuals must have access to employment and are not to be excluded from participation in any employment process, advancement, or benefits of employment because of their race, color, religion, sex, national origin, age, marital status or handicap.

(e) Ethnic Minorities. "Ethnic minorities" means those protected ethnic minority groups so designated by federal compliance agencies for goal-setting and includes Alaskan Natives/American Indians, Asians or Pacific Islanders, Blacks, and Hispanics.

A person may be included in the group to which he or she appears to belong, identifies as his or her group, or is regarded in the community as belonging, but shall be counted in only one ethnic group.

1. American Indian or Alaskan Native means all persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

2. Asian or Pacific Islanders means all persons having origins in any of the original peoples of the Far East, Southeast Asia or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, Samoa, and the Indian subcontinent.

3. Black (not of Hispanic origin) means all persons having origins in any of the black racial groups of Africa.

4. Hispanic means all persons of Chicano, Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race.

(f) Filipino. "Filipino" means all persons having origins in the original peoples of the Philippine Islands. Filipinos are to be counted and reported as part of the Asian/Pacific Islander group as well as in a separate group as required by state law. However, in the goal-setting process, separate employment goals are not needed for Filipinos.

(g) White Persons. "White persons" means all persons having origins in any of the original peoples of Europe, North Africa, the Middle East, and not of Hispanic origin.

(h) Goals and Timetables. "Goals and timetables" means projected new levels of employment of women and historically underrepresented ethnic minority groups as specified in federal regulations to be worked toward on a specific schedule, given the expected turnover in the work force and the availability of persons who are qualified through appropriate training or experience within a reasonable length of time. Goals are not "quotas" or rigid proportions. Quantitative measurements should only be used as management tools to assess the overall effectiveness of the programs. They should relate both to the qualitative and quantitative needs of the district.

Filipinos shall be included in the Asian/Pacific Islander group for goal setting purposes.

(i) Handicapped Person. "Handicapped person" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such an impairment or (3) is regarded as having such an impairment. A handicapped individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining or advancing in employment because of a handicap.

(j) Protected Groups. "Protected groups" means ethnic minorities, women, handicapped persons and Vietnam-era veterans.

(k) Reasonable Accommodation. "Reasonable accommodation" means the efforts made on the part of the employer to remove artificial or real barriers, which prevent or limit the employment and upward mobility of disabled persons.

(l) Sexual Harassment. "Sexual harassment" means unwelcome sexual conduct which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Sections 87101 Education Code, 11092 Government Code; 29 C.F.R. 1602.48 (1981); 29 U.S.C. 793; 41 C.F.R. 60-741-2 (1980).

53002. District Affirmative Action Policy.

The governing board of each California Community College district shall adopt by resolution an Affirmative Action Employment policy which will outline the district's commitment to implement "affirmatively" equal employment opportunity programs for all employees and applicants for employment regardless of race, color, religion, sex, national origin, age, handicap, status as a Vietnam-era veteran, or marital status. This policy shall cover all aspects of personnel policy and practice for all personnel.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Section 87100 Education Code.

53003. District Affirmative Action Plan.

(a) Each community college district shall develop and adopt a district-wide written affirmative action and equal employment opportunity plan to implement its Affirmative Action Policy. Such plans and revisions shall be submitted to the Chancellor's Office for review and approval.

(b) Each community college district shall revise its affirmative action goals and timetables every three years and submit them to the Chancellor's Office for approval. Each community college district shall notify the Chancellor at least 30 days prior to adopting any other amendments to its affirmative action plan.

(c) The plans submitted to the Chancellor shall be public records.

(d) Each community college district shall make a continuous good faith effort to comply with the requirements of its affirmative action plan.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Section 87100 Education Code.

53004. District Evaluation and Report to Chancellor.

Each district shall annually survey its employment patterns in an effort to evaluate its progress in reaching the goals set forth in its affirmative action plan.

Each district shall annually report to the Chancellor, in a manner prescribed by the Chancellor, the results of its annual survey.

The Chancellor's Office shall seek field input from community college districts in developing reporting formats.

Note: Authority cited: Sections 71020, 71025, 71060, 87105 Education Code.

Reference: Section 87100 Education Code.

53005. Minimum Standards.

The compliance with the requirements of Sections 53002, 53003, 53004, and 53021 shall be a minimum standard which a community college district must satisfy to receive state aid.

Note: Authority cited: Sections 71020 and 87105 Education Code.

Reference: Sections 71025 and 87100, Education Code.

Subchapter 2. RESPONSIBILITIES OF THE CHANCELLOR

53010. Assistance.

The Chancellor shall provide guidelines for the development of policies, programs and procedures for affirmative action and equal employment opportunity programs. The Chancellor shall cooperate with and render assistance to community colleges in carrying out the provisions of this subchapter. The Chancellor shall review and approve programs submitted by districts pursuant to Section 53003.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Section 87103 Education Code.

53011. Report.

The Chancellor shall report annually to the Board of Governors and Legislature on the progress and/or effectiveness of all California Community College districts in meeting the provisions of this chapter.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference cited: Section 87104 Education Code.

53012. Periodic Evaluation.

The Chancellor shall periodically evaluate community college districts to determine their compliance with the requirements of their affirmative action plans and this chapter. If the Chancellor finds that a district has failed to substantially comply with the requirements of its plan, the Chancellor shall offer assistance and take whatever action he or she deems necessary to effect compliance.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Section 87102, Education Code.

Subchapter 3. RESPONSIBILITIES OF COMMUNITY COLLEGE DISTRICTS

53020. Implement Affirmative Action Plan.

The means specified in this subchapter are the essential requirements for implementing a district affirmative action plan.

Note: Authority cited: Sections 71020, 87105 Education Code, 11138 Government Code.

Reference: Section 87102, Education Code.

53021. Recruitment.

Community college districts shall undertake a program of verifiable affirmative action recruitment for protected group members in all job categories which reflect underrepresentation, including categorically funded positions and in all executive/administrative/managerial positions. Upward mobility programs may be used in conjunction with a recruitment effort when it promotes the goals of the district's affirmative action plan. "In house" or "promotional only" recruitment shall not be used except when "business necessity" dictates.

Note: Authority cited: Sections 71020, 87105 Education Code, Section 11138 Government Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1-.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1-.9, et seq. (1980); Section 87100, Education Code.

Guideline 53021.

A. Recruitment procedures should be followed for all openings, especially those in job categories which reflect underrepresentation.

B. Selection process should be documented and maintained in accordance with Education Code section 87031 as follows:

1. *Requisitions;*
2. *Position announcement;*
3. *List of recruitment resources used;*
4. *Log of applicants (applicant flow record) including self-identification categories of applicants;*
5. *Reasons for nonselection of applicants/candidates;*
6. *Identification of those interviewed and the successful candidate; and,*
7. *Identification of the (a) individual(s) responsible for making recommendations, and (b) specific procedures utilized for making recommendations at each level of the selection process.*

C. A mailing list which includes members of protected groups as recruitment sources should be maintained and updated annually.

D. Currently employed members of protected groups should be encouraged to refer applicants for positions.

E. Contact with minority, women, and handicapped professional organizations will be of assistance. These groups can be included on the mailing list, but personal contact is of greater assistance.

F. Minority and women oriented publications should be used for positions which are to be advertised.

G. The Affirmative Action Registry and the published lists of organizations/media directed toward minority groups and women provided by the Chancellor's Office should be used whenever possible for job categories underrepresented in ethnic minorities or women.

H. Effectiveness of recruiting sources should be monitored.

I. To ensure consistency and equal treatment, upward mobility actions should be taken only after written procedures have been established.

J. Promotions or "upward mobility programs" should be monitored to ensure that goals of the Affirmative Action Program are a factor.

K. Copies of all certificated and professional job announcements should be sent to the Chancellor's Office, Affirmative Action Unit.

53022. Job Announcements.

Job announcements shall state clearly job specifications setting forth those skills necessary to job performance and the required training and experience related to those skills. The requirements are to be based on a careful analysis of the job. Only bona fide occupational qualifications may be included in job announcements.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1-.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1-.9, et seq. (1980); Section 87100, Education Code.

Guideline 53022.

The affirmative action officer should be involved in the development and approval of the job announcement.

The first step in recruitment for a vacant position or classification should be to analyze and review the responsibilities of the vacant position or classification and required background or experience for filling the position. Requirements for the position should be limited to those which are significantly related to job performance, i.e., bona fide occupational qualifications. Degree requirements and years of experience should not be used except where required by state licensing/credentialing requirements or shown to be bona fide occupational qualifications.

Information should include a description of the position, information regarding the institution and/or unit the position is assigned to, potential salary range, date and time deadline for applications and location for filing the application, name of contact person for questions and further correspondence, and a statement regarding the status of hiring organization as an Affirmative Action Equal Opportunity employer.

Minimum qualifications are those skills, knowledge, and abilities necessary for successful performance of job duties. Minimum qualifications should include a statement of the equivalent qualifications which may be substituted when appropriate.

Desirable or preferred qualifications should not be used to discourage qualified applicants.

53023. Applicant Pool.

All applicants shall be given an opportunity to identify themselves as being a member of a protected group when their application is submitted for purposes of monitoring employment practices. This confidential information will be maintained in the affirmative action office for use in research and in evaluating the effectiveness of the district's affirmative action program.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-1965, comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967, comp. 320; 41 C.F.R. 60-2; 29 U.S.C. 793; 41 C.F.R. 60-741; 38 U.S.C. 2012; 41 C.F.R. 60-250.

Guideline 53023.

When self-identification regarding ethnicity or sex is unavailable from job applicants, then visual identification is acceptable when applications are made in person.

53024. Screening.

All selection testing for employees shall follow procedures as outlined in the Equal Employment Opportunity Commission's "Uniform Guidelines on Employee Selection Procedures." Selection procedures established in the district's affirmative action plan shall be used to identify a reasonable number of qualified candidates for interviews for all recruited positions.

Selection committees shall include members of protected groups whenever possible.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1-.9, et seq. (1980); 38 U.S.C. 2012; 41-C.F.R. 60-250.1-.9, et seq. (1980); 29 C.F.R. 1607 (1978).

Guideline 53024.

When protected group members are not available to serve on recruitment teams and selection committees, for professional positions, local districts should make every effort to include qualified individuals from other institutions or the community, or document the reasons for their absence. Screening and selection committees should be provided with guidelines regarding the types of questions which can or cannot be asked by committee members during interviews.

53025. Agents.

Any individual or group of individuals acting on behalf of the local governing board for the recruitment and screening of personnel, including superintendentships, are agents of the district and subject to all state and federal laws and regulations.

Note: Authority cited: Sections 71020, 87105 Education Code, Section 11138 Government Code.

Reference: Section 87100, Education Code.

Guideline 53025.

All individuals or organizations which represent a community college in the selection process act as agents for the district. Agents should have the responsibility for ensuring a representative pool of applicants. Contracts with agents should include a requirement of a report on procedures to be followed by the agent and such report should be certified by the affirmative action officer as meeting affirmative action requirements. An agent acting in violation of the law may incur personal liability and/or subject the employing district to liability in accordance with appropriate legal principles.

53026. Selection Procedure.

(a) Selection devices such as interviews shall be solely based on job-related requirements.

(b) The Affirmative Action Officer shall ensure that the entire selection process shall be solely based on job-related criteria, a fair impartial examination of the candidates based on job-related criteria, with job-related questions prepared in advance.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1-.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R 60-250.1-.9, et seq. (1980).

53027. Final Selection.

(a) The results of the selection procedures shall be reviewed by the affirmative action officer to ensure that selection of a qualified candidate is supported by factual data and that the elimination of other candidates is based upon bona fide occupational qualifications.

(b) Throughout the entire selection process, the Affirmative Action Officer is responsible for monitoring for adverse impact. If discriminatory intent or effect is identified, the Affirmative Action Officer shall implement solutions and/or confer with the chief administrative officer or designee of the district or college to determine necessary remedies.

(c) Length of service in the district shall not be used as the sole determinant for decisions affecting hiring and promotions.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980); 29 U.S.C. 793; 41 C.F.R. 60-741.1-.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1-.9, et seq. (1980).

53028. Affirmative Action Commitment.

All employment practices, including selection, assignment, promotion, transfer, demotion, or termination decisions, shall be based on job-related factors which include qualifications and capabilities. Seniority shall be considered only where required by law. The goals of the affirmative action program shall also be designed to meet the special needs and aspirations of minority groups, students and the community in counseling, bilingual/multicultural education, and school-staff mobility.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Sections 87100, 87101 Education Code.

Guideline 53028.

To effectuate its affirmative action commitment, districts should seek to hire and retain employees whose backgrounds and abilities add to the cultural diversity of the institution, and who can act as positive role models.

Districts should:

A. Review procedures to eliminate any unlawful discriminatory practices.

B. Display State Department of Fair Employment and Housing and Equal Employment Opportunity Commission posters where applicants and interviewers are likely to see them.

C. Encourage all personnel to treat all job applicants in a positive professional manner.

D. When possible, members of protected groups should be considered for positions which provide positive images for cultural and racial diversity.

E. Eliminate sex-stereotyped job titles.

F. Whenever possible, assign persons with bilingual skills to provide service to non-English-speaking persons or limited-English-speaking ability persons.

G. In a reduction in force situation, examine programmatic needs in a comprehensive manner to ensure protected group members are retained in employment whenever possible.

H. The affirmative action officer should be included in all deliberations concerning reductions in force.

53029. Handicapped.

Districts shall make reasonable accommodation for the handicapped applicant or employee.

Note: Authority cited: Sections 71020, 87105 Education Code.

Reference: Sections 87100, 87101 Education Code; Section 11135 Government Code; 29 U.S.C. 705 and 706.

Guideline 53029.

Disabled/handicapped person(s) means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. Reasonable accommodation is defined as efforts made on the part of the employer to remove artificial or real barriers, which prevent or limit the employment and upward mobility of disabled persons.

Accommodations may include but are not limited to the modification of equipment and provision of assistive devices, modified work schedules, and job restructuring as well as job site modification.

***See** state Fair Employment Practices statute in the Government Code, Section 12900 et. seq.*

53030. Sexual Harassment Policy.

A work place free of sexual harassment and intimidation shall be maintained.

Note: Authority cited: Sections 71020, 71068, 87105 Education Code, Section 11138 Government Code.

Reference: 42 U.S.C. 2000e et seq.; 29 C.F.R. 1604.11.

Subchapter 4. ESSENTIAL ELEMENTS OF AN AFFIRMATIVE ACTION PLAN

53040. Governing Board's Affirmative Action Employment Policy Statement

Each affirmative action plan shall have a written policy statement adopted by the district governing board which sets forth the district's obligation and commitment to equal employment opportunity through affirmative action. The statement must include a plan to ensure non-discrimination in employment, promotion, transfer, and assignment on the basis of race, color, religion, national origin, sex, age, handicap, status as Vietnam-era veteran and/or marital status. This plan must be applied to all levels of employment procedure and to all position classifications.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Section 87101 Education Code; Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980); 20 U.S.C. 793; 41 C.F.R. 60-741.1-.9, et seq. (1980); 38 U.S.C. 2012; 41 C.F.R. 60-250.1-.9, et seq. (1980).

53041. Affirmative Action Responsibilities and Duties

The affirmative action plan shall state that the community college district governing board and the chief district administrator have the overall responsibility for ensuring affirmative action and equal employment opportunity including, but not limited to, recruitment, assignment, promotion, retention, compensation, and training; and for improving representation of minority racial and ethnic groups, women, handicapped persons and Vietnam-era veterans.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Sections 87100, 87101 Education Code.

53042. Affirmative Action Officer.

In the affirmative action plan the community college district shall designate an affirmative action officer to administer the affirmative action program. This officer shall report to the chief district administrator or designee who reports to the chief district administrator.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Sections 87100, 87101 Education Code.

Guideline 53042.

The chief district administrator is ultimately responsible for ensuring affirmative action and equal employment opportunity. He or she may designate an affirmative action officer who in conjunction with the ***personnel*** *administrator will oversee recruitment, assignment, promotion,* ***retention,*** *compensation and training in an effort to improve representation of ethnic minority groups, women, and the handicapped.*

53043. Internal Dissemination.

The affirmative action plan shall require that all district employees shall be apprised of the equal employment opportunity/affirmative action policy, affirmative action plan, and the importance of the employee's participation and responsibility in ensuring the plan's implementation.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Sections 87100, 87101 Education Code.

53044. External Dissemination.

The affirmative action plan shall require that a written notice be provided at least annually to various community organizations concerning the district's affirmative action policy and to solicit their assistance in recruiting ethnic minority, female, handicapped, and Vietnam-era veteran candidates.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Section 87100, 87101 Education Code.

53045. Complaint Procedure.

The district affirmative action plan shall state that an employee or applicant for employment may file a complaint with the district affirmative action officer alleging that the district has failed to satisfy the requirements of this chapter. The affirmative action plan shall state the district's procedure for responding to complaints.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Sections 87100, 87105 Education Code.

Guideline 53045.

A district may wish to combine its unlawful discrimination complaint procedures so long as the mandated requirements are observed.

53046. Work Force Analysis.

Each affirmative action plan shall contain a work force analysis in which the district shall determine statistically the racial, ethnic, and sex composition of existing staff by the following seven job categories:

Executive/Administrative/Managerial, Faculty and Other Instructional Staff, Professional Nonfaculty, Secretarial/Clerical, Technical and Paraprofessional, Skilled Crafts, Service and Maintenance.

Districts shall supply the information required by the Chancellor's Office Information System, Staff Data File.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: 29 C.F.R. 1602.48 (1981)

Guideline 53046.

After a district has once submitted an affirmative action plan which is approved by the Chancellor, the district will report its workforce information annually through the Chancellor's Office Information System.

Districts should perform their workforce analysis on a departmental basis or by divisions where this is a smaller grouping for the purpose of identifying problem areas of underrepresentation of protected groups.

The workforce analysis for faculty and other instructional staff should take into consideration the following:

A. Each person in a nonadministrative certificated position should be listed within one of the appropriate departmental groupings under the specific department to which he/she is assigned a majority of hours.

B. *If an instructor teaches in more than one department, he/she shall only be counted **once** and that is under the department in which he/she is assigned a **majority** of **weekly** student contact hours.*

C. *The district should indicate whether **faculty** members are tenured, on tenure **track**, or untenured.*

D. *The following departmental groupings may be used:*

1. *Natural Sciences*

Agricultural Science
Astronomy
Biological Science
Chemistry
Earth and Physical Sciences
Life Science
Mathematics
Physical Science

2. *Social Science*

Afro-American Studies
American Cultures
Anthropology
Behavioral Sciences
Economics
Education
Geography
History
Jewish Studies
Law
Mexican-American Studies
Political Science
Psychology
Social Sciences

3. *Humanities*

Art
Art Philosophy
Developmental Communications
English
Fine Arts
Foreign Language
Journalism
Language Arts
Media Arts
Music
Philosophy
Photography
Speech
Theatre and Cinema Arts

4. *Health Education and Physical Education*

Health Education
Physical Education

5.(i) *Career Education*

Administration of Justice
Aircraft
Allied Health
Apparel Arts
Architecture
Automotive
Business Administration
Business Education
Child Development
Computer Science
Computer Technology
Cosmetology
Culinary Arts
Dental
Drafting Technology
Electronics Technology
Engineering Technology
Family and Consumer Studies
Fire Science
Industrial Education
Industrial Technology
Measurement Science
Nursing
Occupational Therapy
Opthalmic Optics
Radiologic Technology
Secretarial Science
Transportation-Travel-Tourism

5.(ii) *Apprentice Programs - (Those programs for vocations requiring union membership)*

Building Construction Technology
Electrical/Mechanical
Metals Technology
Printing & Lithographic Trades
Radio-TV-Film

6. *Instruction/Student Services (Certificated Personnel)*

All certificated nonteaching personnel who are not administrators, and who are serving in some capacity related to student services or instruction, should be listed within this group. For example, some of the positions which would be included would be the following:

Counselors
Financial Aids Coordinators
Health Office Nurses
Librarians
Instructional Support Services Coordinators
Learning Resources Center Coordinators

Colleges should do a thorough workforce analysis by department.

E. Part-time or hourly faculty and other instructional staff should be listed separately within the appropriate departmental grouping so that an accurate picture is given regarding the size of the full-time staff.

F. Districts with small size faculties may report their instructional workforce on a college-wide basis with written approval of the Chancellor.

The workforce analysis for noninstructional positions shall list each position under one of the following job categories:

Executive/Administrative/Managerial
Professional Nonfaculty
Secretarial/Clerical
Technical and Paraprofessional
Skilled Crafts
Service/Maintenance

53049. Utilization Analysis

The affirmative action plan shall include a utilization analysis that includes a determination of whether minorities and women are being underrepresented or underutilized in any job category. The district shall consider the numbers and percentages of staff in each position category within each of the job categories by ethnic and sex classification compared with the general availability of minorities and women in the relevant work force having requisite skills to fill vacancies as they occur.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R., 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980).

Guideline 53049.

The district should consider all of the following factors in its utilization analysis:

A. The numbers and percentages of staff in each position category within each of the job categories by ethnic and sex classification;

B. The availability of promotable ethnic minority and women employees;

C. The general availability of minorities and women in the relevant workforce having requisite skills to fill vacancies as they occur;

D. The expansion, reduction, and turnover projected in the workforce of the district;

E. The existence of district training programs such as internships and/or institutions capable of training personnel in the requisite skills for promotional purposes;

F. The programs and training activities which the district is able to undertake as a means of making all positions and all job classes available to minorities and women;

G. The determination of whether minority and women employees are afforded a full opportunity and are encouraged to participate in all district educational training programs and activities.

53050. Corrective Action.

The affirmative action plan shall require that when imbalances exist in the various job categories of the district work force, district practices and policies must be examined to determine the factors contributing to the imbalance. Employment practices within the personnel system which constitute barriers to equal opportunity shall be identified and corrective action designed to eliminate the barriers.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-65 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980).

Guideline 53050.

Conditions which should have careful review and most often necessitate corrective action include the following:

A. Lateral or vertical movement of minority or women employees occurs at a lesser rate than that of other employees in all job classifications and titles.

B. Termination rate for minorities and women is higher than that of non-minorities and men.

C. Application forms, tests, interviews, and other related preemployment material are not in compliance with local, state, federal regulations, executive orders, or guidelines.

D. Entrance qualifications are not consistent with the actual functions and duties required of the position.

E. Sex designation is used when not a bona fide occupational requirement for the job.

F. Minorities and women are absent from or underrepresented in staff training or other career improvement programs.

G. Recruitment efforts do not yield a sufficiently representative group of applicants to indicate ethnic minorities, women, the handicapped, and Vietnam-era veterans are being reached for all jobs at all levels.

H. The wage and salary structure for male and female employees shows disparity and is not consistent with the equal pay for equal work principle.

I. There is evidence of harassment, coercion, or other adverse acts.

53051. Goals and Timetables.

The affirmative action plan shall require that affirmative action programs be designed to eliminate discriminatory employment practices. Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies in representation from ethnic minority groups and women at all employment levels within the district.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Executive Order 11246, 3 C.F.R. 1964-1965 comp. 339, as amended by Executive Order 11375, 3 C.F.R. 1967 comp. 320; 41 C.F.R. 60-2.1-3.2, et seq. (1980).

Guideline 53051.

The Taskforce on Data Availability will provide availability statistics and a process for computation of goals in early 1983 which districts should follow.

A. Goals and timetables shall be determined and displayed separately for ethnic minorities and women and established for each of the seven job categories of employment listed in section 53046.

B. When deficiencies exist, the district shall establish and set forth specific three-year goals and timetables district-wide and submit them to the Chancellor's Office. Such goals and timetables shall be documented as part of the district's written affirmative action program and shall be maintained in the district's central office and in the main library.

C. The goals and timetables shall be established in terms of the district workforce analysis of deficiencies and a projection of anticipated vacancies, expansion, and attrition.

D. Each college within a district shall establish goals and timetables to correct the underrepresentation of minorities and women at each location. Given the commitment of the district, all locations shall exert good faith efforts in goal setting and hiring. Each college and district office shall submit goals and timetables which encompass these requirements:

1. Each location is to refer to the district-wide goals before setting its own three-year goals.

2. Interim, year to year, goals shall be set that will bring the location up to the district-wide three-year plan goals.

E. In setting goals for full-time faculty and other instructional staff, colleges are to set the goals on the basis of the departmental groupings which were selected pursuant to the workforce analysis.

F. Goals for part-time or hourly faculty and other instructional staff should be set on a college-wide basis rather than on the departmental grouping basis due to the frequent turnover, length of assignment, and fluctuation in programming demands.

G. In establishing timetables to meet goals, each college and its sub-units as well as the district office and its sub-units should consider carefully the anticipated expansion, contraction and turnover of its workforce, but seek to stay within a three-year timeline whenever possible.

53052. Affirmative Action Advisory Committee.

The district affirmative action plan shall require that an affirmative action advisory committee be established to assist the district to achieve understanding and support of affirmative action/equal employment opportunity policies and programs, and shall assist in developing the affirmative action program in conformity with state and federal statutes, regulations, and guidelines, monitoring its progress and acting as an advisory body to the affirmative action officer. The membership of the Affirmative Action Advisory Committee shall include ethnic minorities, women, the handicapped and Vietnam-era veterans whenever possible.

Note: Authority cited: Sections 71020, 71025, 71068, 87105 Education Code.

Reference: Section 87100 Education Code.

Guideline 53052.

A. Committee Functions

The Affirmative Action Advisory Committee should meet regularly to review affirmative action goals, policies, and progress, and to make suggestions to the administration through the Affirmative Action Officer to effectuate a more meaningful Affirmative Action Program. The Committee should be particularly concerned with the following areas:

1. *The Committee should evaluate the adequacy of program goals and the effectiveness of the affirmative action program.*

2. *The Committee should review reports prepared by the Affirmative Action Officer regarding the district's hiring progress regularly and suggest appropriate actions and/or recommend policy changes as necessary.*

3. *To establish accountability for affirmative action progress at all levels, the Committee should be given the opportunity to comment and make recommendations on the assignment of affirmative action responsibilities to staff.*

4. *The Committee should evaluate whether there is sufficient information distributed to employees clarifying misconceptions regarding affirmative action and relaying actual goals, responsibilities, and progress to date by the college and the District Office and make suggestions to ensure that this information demonstrates to employees that an effective affirmative action program benefits everyone.*

5. *The Committee should assist in recruitment efforts if necessary.*

6. *The Committee should advise administration regarding special training needs related to affirmative action and assist in planning and implementing training programs to meet those needs.*

7. *The Committee should: (1) request periodic reports from the campus person responsible for facilitating campus services to handicapped persons; (2) review employment policies regarding the handicapped; (3) assist in reviewing other written and unwritten college rules, policies, practices, and procedures affecting the handicapped; and (4) suggest revisions of those which may potentially be a cause for complaints of discrimination by disabled persons.*

B. *Composition and Selection of Committee Members and Orientation*

The affirmative action advisory committee should be composed of the affirmative action officer; representatives of both certificated and classified employees; selected high-level district administrators; and representatives from community organizations whose memberships are truly representative of racial and ethnic minority groups, women, and the handicapped. District employees who are committee members should be permitted to participate in Committee activities on district time upon approval by the Affirmative Action Officer or appropriate administrator. Each College and the District Office should develop a written procedure for selection of members.

The Affirmative Action Officer should provide all new committee members with an orientation that includes the following:

1. *Copy of the college and/or district Affirmative Action Plan;*
2. *The annual workforce data which details the ethnic and sex representation of employees by occupational categories and departmental grouping;*
3. *A summary of equal employment opportunity/affirmative action court cases;*
4. *A copy of the college and/or district rules, policies, and procedures manual as it becomes available; and*
5. *A copy of the college and/or district Discrimination Complaint Procedure.*

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